

THOUSAND PEAKS RANCHES, INC.

IBLA 92-180

Decided June 30, 1994

Appeal from a decision of the Area Manager, House Range Resource Area (Utah), Bureau of Land Management, setting the fair market value rental rate for right-of-way U-47306 and requiring payment of annual rental.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Rights-of Way -- Rights-of-Way: Federal Land Policy and Management Act of 1976

BLM must charge fair market rental value for a right-of-way issued pursuant to Title V of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. §§ 1761-1771 (1988).

2. Appraisals -- Federal Land Policy and Management Act of 1976: Rights-of-Way: Appraisals

BLM's fair market value determination will be affirmed if the appellant does not demonstrate error in the appraisal method or present convincing evidence that the fair market value determination is erroneous and the case file contains the facts or an analysis sufficiently complete to allow the Board to conclude that the fair market value determination is supported by the record.

3. Federal Land Policy and Management Act of 1976: Rights-of-Way -- Rent -- Rights-of-Way: Appraisals -- Rights-of-Way: Federal Land Policy and Management Act of 1976

Reduction or waiver of rental for a right-of-way is authorized by 43 CFR 2803.1-2 if payment of full rental would cause undue hardship. To qualify for reduction the holder of the right-of-way must formally request relief pursuant to that section and submit data and relevant information demonstrating the existence of a hardship.

APPEARANCES: Lorin L. Moench, President, Thousand Peaks Ranches, Inc., for appellant; David K. Grayson, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Thousand Peaks Ranches, Inc. (1000 Peaks), has appealed a December 9, 1991, decision by the House Range Resource Area Manager, Utah, Bureau of Land Management (BLM), setting the fair market annual rental for right-of-way U-47306 and directing 1000 Peaks to submit rental payment.

Right-of-way U-47306 was issued for a 3.27-acre tract containing a reservoir and pipeline in sec. 14, SW 1/4, SE 1/4 NW 1/4, T. 13 S., R. 18 W., Salt Lake Meridian, Juab County, Utah, on December 11, 1981, pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1988). The grant document stated that the annual rental amount would be determined by appraisal.

In a March 8, 1982, letter BLM advised 1000 Peaks that the fair market rental had been determined by appraisal to be \$ 25 for a 5-year period. 1000 Peaks paid the rental. On November 17, 1986, BLM advised 1000 Peaks that the first 5-year period was expiring on December 10, 1986, and that \$ 25 was due for the second 5-year period (through December 10, 1991) "unless it is determined through another appraisal that your rental should be changed."

In the December 9, 1991, decision on appeal the Area Manager advised 1000 Peaks that "[a]n appraisal has been completed by our appraiser in our Utah State Office and the fair market rental for Right-of-Way Grant U-47306 has been determined to be \$ 200 per year." 1000 Peaks was directed to remit \$ 217, for prorated rental for the period from December, 10, 1991, through December 31, 1992.

1000 Peaks asserts on appeal that the previous \$ 25 for the 5-year rental rate was based on an appraisal and represented fair market value, and that the increased rental is burdensome. 1000 Peaks also contends that BLM's appraisal is in error, asserting that it was advised by a real estate appraiser that land like that embracing the right-of-way would be valued at \$ 25 to \$ 30 per acre. It also asserts that it has used the right-of-way since around 1900, and no rental should be assessed. Finally, it contends that BLM miscalculated the acreage subject to the right-of-way, and the right-of-way contains 1.09 acres rather than 3.27 acres.

[1] 1000 Peaks' right-of-way was issued pursuant to FLPMA, which authorizes BLM to grant rights-of-way for "pipelines * * * for the * * * transportation * * * of water." 43 U.S.C. § 1761(a) (1988). Under 43 U.S.C. § 1764(g) (1988), the law applicable when the right-of-way was issued, BLM was required to charge fair market rental. 1000 Peaks' free use of the right-of-way land prior to December 11, 1981, has no relevance to BLM's obligation to charge and collect fair market value rental for the right-of-way. Jacqueline Balander, 125 IBLA 262, 264-65 (1993); see A. Keith Barben, 81 IBLA 332, 334-35.

[2] Section 504(c) of FLPMA, 43 U.S.C. § 1764(g) (1988), directs BLM to charge fair market value rental for a right-of-way. In most cases BLM's fair market value determination will be affirmed if the appellant does not

demonstrate error in the appraisal method or present convincing evidence that the fair market value determination is erroneous. See, e.g., Coy Brown, 115 IBLA 347 (1990); Thomas L. Sawyer, 114 IBLA 135 (1990). However, the case file must contain the facts or an analysis sufficiently complete to allow the Board to conclude that the fair market value determination is supported by the record. See Communications Enterprises, Inc., 105 IBLA 132 (1988); High Country Communications, Inc., 105 IBLA 14 (1988); Clinton Impson, 83 IBLA 72 (1984); Full Circle, Inc., 35 IBLA 325, 85 I.D. 207 (1978). If there is no showing of error in BLM's appraisal that appraisal must normally be rebutted by another appraisal. Great Co., 112 IBLA 239, 242 (1989), and cases there cited.

There is no formal appraisal document in the case file. However, BLM has submitted a December 3, 1991, memorandum from BLM's staff appraiser to the Richfield District Manager which states, in pertinent part:

Pursuant to your request for a rental determination covering the subject right-of-way for 3.27 acres, the following estimate is furnished.

A minimum rental charge of \$ 50 per acre per year, or fraction thereof, is currently being assessed for leases, permits, and easements not covered under the lineal Right-of-Way rent schedule. According to information furnished this office, the subject encompasses 3.27 acres and is situated in an area where demand and highest and best use potential do not suggest "high" property values. Because of the small size of the subject, calculations show the subject's land value would have to exceed \$700 per acre (rounded) to yield an annual rent of more than \$200. However, known transactions in the vicinity of the subject indicate that land values are generally lower than this amount.

As a consequence, I recommend that the lessee be assessed a rental of \$ 200 per year for the subject right-of-way. [Emphasis in original.]

Counsel for BLM has also supplemented the record by submitting a January 17, 1992, memorandum from BLM's appraisal office. ^{1/} In that memorandum BLM's Chief State Appraiser offers the following additional rationale for the fair market rental valuation of right-of-way U-47306:

The \$ 200 per year being charged Thousand Peaks Ranches, Inc. simply reflects our determination of a minimum acceptable rental, and even though it represents a substantial increase over what was previously being charged, it is actually less than what some other land management agencies in the State would charge. For

^{1/} A certification included with BLM's submission indicates that a copy of the documents had been sent to 1000 Peaks.

example, at the present time the Utah Department of State Lands and Forestry also charges an annual minimum rent of \$ 50 per acre, or \$ 250 per project, whichever is greater.

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Our annual market survey of all significant land use/land management agencies in Utah, both public and private, indicates that the majority of agencies established their minimum rents administratively many years ago. The amount, however, was predicated on the estimated cost of doing business. Over the years the use of minimum acceptable rental values has become quite common throughout the State, and as a consequence, we feel it reflects a valid segment of the market.

The Utah Appraisal Section arrived at the \$ 50 per acre rent used in this particular case by analyzing 476 sales selected from our total data base. The methodology used to derive this rental meets Bureau and Industry appraisal standards and is based upon a fair rate of return on the estimated value of the rights conveyed. Because the \$ 50 per acre rental is also supported by the established minimum rental values used by other land use/management agencies, the Utah Appraisal Staff feels the use of this figure is not only supported by the market, but provides a very cost effective means for handling low valued cases as well.

Because of the slow market in much of rural Utah, the \$ 50 per acre per year rental figure has remained unchanged for five years. We are currently receiving rental based upon this figure in dozens of right-of-way cases, a number of which are nearly identical to the case at hand.

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* * * The use of minimum acceptable rental/sales value is a legitimate part of the market, and with the advent of automated data bases and the deletion of the \$ 5 per year figure from 43 CFR, we feel we have been able to derive a more realistic minimum rental amount than was previously available.

Documents identified as "Updates for Rental Calculation Procedures for Leases, Permits, and Easements/Rights-of-Way" from May 1988 through September 30, 1991, are attached to the Chief State Appraiser's memorandum. These updates are reports of the result of periodic computer analysis of verified sales transactions which are used to determine whether the rental amount is reflective of market conditions. An average sales price per acre is generated from the transactions in the computer data base, and the fair market rental is calculated by multiplying the average per-acre sales price by the average percentage of rights conveyed (70 percent) and the acceptable rate of return (10 percent). The fluctuations in average price per acre were found to be so minor during the period covered by the updates that the average fair market rental value has remained constant.

The applicable regulation, 43 CFR 2803.1-2(c)(3)(i), provides that rental for non-linear rights-of-way

shall be based on either a market survey of comparable rentals, or on a value determination for specific parcels or groups of parcels * * *. All such rental determinations shall be prepared to the standards and format described in the Uniform Appraisal Standards for Federal Land Acquisition (Department of Justice publication) and/or in certain cases as required by the Bureau's Appraisal manual (9300).

The documents submitted on appeal indicate that BLM's fair market rental valuation was based "on a value determination for specific parcels or groups of parcels," as required by the regulation. 1000 Peaks claims that this valuation is too high, but has tendered no evidence that the fair market rental value of a similarly situated parcel would be less. Nor has 1000 Peaks shown error in BLM's methodology. Thus, there is nothing in the record to demonstrate error. Consequently, we have no legal basis for disturbing BLM's fair market rental valuation of \$ 50 per acre.

1000 Peaks also claims that the acreage used by BLM to calculate the rental is excessive. It maintains that the actual pond is only 300 by 100 feet (0.69 acre), and that the pipeline lies within "a ten foot wide permanent right-of-way" (0.40 acre, for a total of 1.09 acres). The right-of-way grant, which contains nine stipulations was accepted by 1000 Peaks when its president signed the grant on December 7, 1981. Stipulation 1 describes the land subject to the grant as a "buried pipeline 1748 feet long and 30 feet wide" (1.20 acres), "and a catchment pond 300 feet square" (2.07 acres for a total of 3.27 acres). A stipulation is a contract provision to which the general rules of contract interpretation apply. Exxon Corp. v. BLM, 118 IBLA 38, 49 (1991); United States v. Ideal Cement Co., 5 IBLA 235, 241, 79 I.D. 117, 120 (1972), aff'd, Ideal Basic Industries Inc. v. Morton, 542 F.2d 1364 (9th Cir. 1976). The stipulation describing the dimensions of the grant is clear and unambiguous. If 1000 Peaks desires to reduce the acreage subject to the right-of-way grant, and thereby reduce the rental amount, it should seek an amendment of the grant. As it now stands, 1000 Peaks has contracted for a 3.27-acre right-of-way.

[3] There are specific situations when the Department may grant relief from the obligation to pay the fair market rental amount. See 43 U.S.C. § 1764(g) (1988) and 43 CFR 2803.1-2(b) which grant authority to reduce or waive the rental if the State Director concurs with the authorized officer's determination that "the requirement to pay the full rental will cause undue hardship on the holder * * * and that it is in the public interest to reduce or waive said rental." 43 CFR 2803.1-2(b)(2)(iv). The authorized officer may make a proposed finding of undue hardship after consulting with a right-of-way holder who has submitted data, information and other material in support of granting relief. It appears from the record that 1000 Peaks has not availed itself of this section by seeking relief, submitting proof of hardship, and showing that the grant of relief would be in the public interest.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

James L. Byrnes
Chief Administrative Judge